

AMENDED IN ASSEMBLY MARCH 24, 1998

AMENDED IN SENATE JANUARY 22, 1998

AMENDED IN SENATE MAY 21, 1997

**SENATE BILL**

**No. 1289**

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**Introduced by Senator Calderon**

February 28, 1997

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An act to repeal and add Section 5061 of the Business and Professions Code, relating to accountancy.

LEGISLATIVE COUNSEL'S DIGEST

SB 1289, as amended, Calderon. Public accountancy: commissions.

Existing law prohibits any person engaged in the practice of public accountancy from paying a commission to obtain a client, or from accepting a commission for a referral to a client of products or services of others. Existing law further provides that these provisions shall not prohibit payments for the purchase of an accounting practice or retirement payments to individuals presently or formerly engaged in the practice of public accounting or payments to their heirs or estates.

This bill would repeal the above provisions and instead would prohibit a person engaged in the practice of public accountancy from paying a fee or commission to obtain a client or from accepting a fee or commission for referring a client to the products or services of a 3rd party, subject to certain exceptions. This bill would also prohibit a person engaged in the practice of public accountancy from performing services for a client for a commission or from

receiving a commission from a client when that person also performs specified services for that client.

The bill would also require a person engaged in the practice of public accountancy who is not prohibited from performing services for a commission, or from receiving a commission, and who is paid or expects to be paid a commission, to disclose that fact to any client or entity to whom that person recommends or refers a product or service to which the commission relates.

This bill would also provide that its provisions shall not prohibit payments for the purchase of any accounting practice or retirement payments to individuals presently or formerly engaged in the practice of public accountancy or payments to their heirs or estates. It would also *provide for a definition of “fee” for purposes of these provisions and would* require the State Board of Accountancy to adopt regulations to implement these provisions, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 5061 of the Business and
- 2 Professions Code is repealed.
- 3 SEC. 2. Section 5061 is added to the Business and
- 4 Professions Code, to read:
- 5 5061. (a) Except as expressly permitted by this
- 6 section, a person engaged in the practice of public
- 7 accountancy shall not: (1) pay a fee or commission to
- 8 obtain a client or (2) accept a fee or commission for
- 9 referring a client to the products or services of a third
- 10 party.
- 11 (b) A person engaged in the practice of public
- 12 accountancy who is not performing any of the services set
- 13 forth in subdivision (c) and who complies with the
- 14 disclosure requirements of subdivision (d) may accept a
- 15 fee or commission for providing a client with the products
- 16 or services of a third party where the products or services
- 17 of a third party are provided in conjunction with
- 18 professional services provided to the client by the person



1 engaged in the practice of public accountancy. *Nothing*  
2 *in this subdivision shall be construed to permit the*  
3 *solicitation or acceptance of any fee or commission solely*  
4 *for the referral of a client to a third party.*

5 (c) A person engaged in the practice of public  
6 accountancy is prohibited from performing services for a  
7 client for a commission or from receiving a commission  
8 from a client during the period in which the person also  
9 performs for that client any of the services listed below  
10 and during the period covered by any historical financial  
11 statements involved in those listed services:

12 (1) An audit or review of a financial statement.

13 (2) A compilation of a financial statement when that  
14 person expects, or reasonably might expect, that a third  
15 party will use the financial statement and the compilation  
16 report does not disclose a lack of independence.

17 (3) An examination of prospective financial  
18 information.

19 (d) A person engaged in the practice of public  
20 accountancy who is not prohibited from performing  
21 services for a commission, or from receiving a  
22 commission, and who is paid or expects to be paid a  
23 commission, shall disclose that fact to any client or entity  
24 to whom the person engaged in the practice of public  
25 accountancy recommends or refers a product or service  
26 to which the commission relates.

27 (e) The board shall adopt regulations to implement,  
28 interpret, and make specific the provisions of this section  
29 including, but not limited to, regulations specifying the  
30 terms of any disclosure required by subdivision (d), the  
31 manner in which the disclosure shall be made, and other  
32 matters regarding the disclosure that the board deems  
33 appropriate. These regulations shall require, at a  
34 minimum, that a disclosure shall comply with all of the  
35 following:

36 (1) Be in writing and be clear and conspicuous.

37 (2) Be signed by the recipient of the product or  
38 service.

39 (3) State the amount of the commission or the basis on  
40 which it will be computed.

1 (4) Identify the source of the payment and the  
2 relationship between the source of the payment and the  
3 person receiving the payment.

4 (5) Be presented to the client at or prior to the time  
5 the recommendation of the product or service is made.

6 (f) *For purposes of this section, “fee” includes, but is*  
7 *not limited to, a commission, rebate, preference,*  
8 *discount, or other consideration, whether in the form of*  
9 *money or otherwise.*

10 (g) This section shall not prohibit payments for the  
11 purchase of any accounting practice or retirement  
12 payments to individuals presently or formerly engaged in  
13 the practice of public accountancy or payments to their  
14 heirs or estates.

15 SEC. 3. By modifying the regulation of commissions  
16 in Section 5061 of the Business and Professions Code, it is  
17 not the intent of the Legislature in enacting this act to  
18 diminish in any manner the duties of certified public  
19 accountants to clients, nor to abrogate regulations of the  
20 State Board of Accountancy relating to objectivity.

